

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JoAnne Pena,

Plaintiff,

v.

Civ. No. 1:21-cv-00851 MIS/JFR

County of Santa Fe,
Derrick Williams, and
Michael Oliver,

Defendants.

ORDER GRANTING MOTION TO DISMISS

THIS MATTER comes before the Court on Plaintiff's Motion to Dismiss Plaintiff's Claims Without Prejudice. ECF No. 17. Plaintiff seeks the dismissal without prejudice of all claims removed to federal court. *Id.* at 1.

Pursuant to the Federal Rules of Civil Procedure, a plaintiff may voluntarily dismiss an action without a court order by filing: "(1) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or (ii) a stipulation of dismissal signed by all parties who have appeared." Fed. R. Civ. P. 41(a)(1)(A). Alternately, the court may dismiss an action at the plaintiff's request "on terms that the court considers proper." Fed. R. Civ. P. 41(A)(2). Unless the order states otherwise, such dismissal is without prejudice. *Id.*

In her brief, Plaintiff indicated that opposing counsel opposes the Motion to the extent that it seeks dismissal without prejudice. ECF No. 17 at 2. However, Defendant

County of Santa Fe¹ did not respond to the Motion within the time allotted by the Local Rules of Civil Procedure and has expressed its intent not to file a response. See ECF No. 18 at 1. “The failure of a party to file and serve a response in opposition to a motion within the time prescribed for doing so constitutes consent to grant the motion.” D.N.M.-LR 7.1(b). Accordingly, the Court finds that the Motion to Dismiss is unopposed and should properly be granted. See Fed. R. Civ. P. 41(A)(2).

IT IS THEREFORE ORDERED that Plaintiff’s Motion to Dismiss Plaintiff’s Claims Without Prejudice (ECF No. 17) is **GRANTED**. All claims are hereby **DISMISSED WITHOUT PREJUDICE**.

IT IS SO ORDERED.

A handwritten signature in black ink that reads "Margaret Strickland". The signature is written in a cursive, flowing style. Below the signature is a solid horizontal line.

MARGARET STRICKLAND
UNITED STATES DISTRICT JUDGE

¹ Defendants Derrick Williams and Michael Oliver have not entered appearances in this matter. Consequently, Plaintiff was not required to seek their consent in order to dismiss her action. See Fed. R. Civ. P. 41(a)(1)(A)(ii).